

REMARKS

Overview

The current non-final Office Action dated June 13, 2008 indicates the following: claims 1, 8-18, 32-53, 59-64 and 66-74 are rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter; and claims 1, 7-19, 32-74, 77 and 79-87 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Carmax ([www.carmax.com](http://www.carmax.com)) in view of Bilibin et al. (U.S. Patent Publication No. 2005/0197892).

Applicants hereby amend claims 1, 14-16, 40, 59-60, 62-63 and 68 in order to clarify the subject matter of their invention. Thus, claims 1, 7-11, 13-19, 32-74, 77 and 79-87 continue to be pending.

Analysis

Rejections Not Based On Prior Art

In the current Office Action, many of the pending claims have been newly rejected as allegedly being directed to non-statutory subject matter. In particular, with respect to computing device and computer system claims 59-62, the current Office Action alleges that these claims are directed to non-statutory subject matter due to a failure to recite sufficient structural hardware elements of the claims. In addition, with respect to the computer-implemented method claims 1, 8-18, 32-53, 63-64 and 66-74, the current Office Action alleges that these claims are directed to non-statutory subject matter based on reciting abstract ideas that can be performed in the mind of a user. (Office Action dated June 13, 2008, pages 2-4).

Applicants disagree that any of the previously pending claims were directed to non-statutory subject matter, and note that it appears to be a logical contradiction that a human user can perform computer-implemented steps solely in the user's mind. Nonetheless, the claims 1, 8-18, 32-53, 59-64 and 66-74 have been amended in order to expedite prosecution, and are believed to clearly recite statutory subject matter. In particular, each of the independent computing device and computer system claims 59 and 62 as amended generally recites that the computing device or computer system comprises one or more memories in addition to other components, and thus clearly recites hardware structural elements. In addition, each of the

independent computer-implemented method claims 1, 16 and 63 has been amended to further generally recite that particular claim elements in the bodies of these claims are performed automatically under the control of a “computer system,” and Applicants submit that it is impossible for a human user to perform such computer-implemented steps solely in the user’s mind. Furthermore, each of these computer-implemented method claims generally recites a useful, concrete and tangible result in enabling a customer of a merchant to place an order for physical items to be provided to the customer in accordance with an automatically determined fulfillment plan, and Applicants further submit that the ordering and delivery of items to customers cannot be an abstract idea that is performed solely in a user’s mind.

Accordingly, claims 1, 8-18, 32-53, 59-64 and 66-74 clearly recite statutory subject matter, and Applicants request that this rejection be withdrawn.

Rejections Based On Prior Art

The current Office Action has rejected each of the previously pending claims as being unpatentable over a combination of Carmax and Bilibin. However, various of the pending claims as rejected and as currently amended include features and provide functionality not disclosed or suggested by Carmax or Bilibin, and thus are allowable over those references.

The pending claims are generally related to enhancing operations of a merchant or other item ordering service by automatically identifying multiple alternative fulfillment plans that are options for the merchant to use to fulfill an order from a customer for one or more items, and by automatically determining information about how use of particular fulfillment plan options will affect fulfillment of the order. For example, before receiving an order from a customer for one or more items, the described techniques may be used to automatically select a preferred one of multiple alternative fulfillment plan options for fulfilling the order, such as to enable the customer to receive information about an actual delivery date of the one or more items to the customer (or other recipient) if the customer places the order using a particular fulfillment plan. In at least some embodiments, the merchant or other item ordering service that fulfills orders may have multiple alternative item distribution centers to use in fulfilling orders, such as item distribution centers that are geographically distributed in various locations and that each carry inventory for various items, and may consider alternative fulfillment plans that include using various of the distribution centers as part of the order fulfillment processing.

As one example of features and functionality that are not taught, suggested or otherwise obvious in light of Carmax and Bilibin, various of the pending claims generally recite that a computer system of a merchant or online order service is used to automatically determine multiple alternative options for fulfilling an order, and to automatically select one of the multiple determined alternative options for use with the order based at least in part on an actual delivery date determined for the selected option and/or on a determined cost for the selected option. Furthermore, various of the pending claims generally recite that the alternative fulfillment plan options are each evaluated to determine actual delivery date and/or other information for that fulfillment plan option based at least in part on determined processing that will occur at the item distribution center(s) if the order is fulfilled using that fulfillment plan option, such as to determine a cost of use of each fulfillment plan option and/or actual delivery time information. For example, independent computer-implemented method claim 16 as amended recites the following:

... under control of a computer system of the merchant, and upon receiving the indication and before receiving the request to initiate the ordering process to order the items,

automatically determining multiple fulfillment plans that are options for fulfilling an order for the items, each fulfillment plan indicating one or more distribution centers . . . [that are] a selected subset of multiple alternative distribution centers of a merchant that each are available to supply at least one of the indicated items;

    for each of at least some of the determined fulfillment plans, automatically determining a time of actual delivery of the items if that fulfillment plan is used to fulfill the order and determining a cost for fulfilling the order if that fulfillment plan is used to fulfill the order, the determining of actual delivery time based at least in part on information determined about processing that would take place at the distribution centers indicated by the fulfillment plan . . . , the processing that would take place at those indicated distribution centers for that fulfillment plan including preparing the items for the transporting of the items from those indicated distribution centers;

automatically selecting one of the at least some determined fulfillment plans to be used for fulfilling the order based at least in part on the determined actual delivery time for the selected fulfillment plan and based at least in part on the determined cost for the selected fulfillment plan; . . .

Independent computer-implemented method claim 63 as amended similarly recites the following:

... under control of a computer system of a merchant, and for each of multiple alternative distribution centers of the merchant, determining at least one option for

fulfilling the order from that distribution center that includes a manner of shipping the order to a recipient;

under the control of the computer system of the merchant, and for each of multiple of the determined options, determining an actual provision date on which the order will be provided to the recipient if that determined option is used for fulfilling the order and determining a cost for fulfilling the order if that determined option is used to fulfill the order, the determining of the actual provision date being based at least in part on processing that would take place at the distribution center for the option to prepare the order to be packaged and shipped; and . . .

The other independent claims 1, 54, 59, 62, and 77 each recite similar language for some or all of the indicated features.

Conversely, Carmax and Bilibin appear to lack any teaching or suggestion to have or use these features in the manner claimed.

With respect to Carmax, the cited disclosure appears to describe how a user can search a database of new and used vehicles to identify particular vehicles that satisfy search criteria specified by the user. The identified vehicles in the search results may be physically located in one or more stores, depending on the search criteria. The user may then select a particular vehicle to purchase if so desired. If the selected vehicle is located at a non-local store, transfer fees may in some cases be added for bringing the vehicle to a local store.

With respect to Bilibin, it appears to generally disclose that an auction seller may currently have possession of an item that is to be auctioned, and may benefit from assistance in shipping that item to an auction buyer. Accordingly, the Bilibin system allows such an auction seller to specify multiple alternative shipping companies that may be used to ship the item from a single starting location to a destination location of a buyer, and to obtain shipping prices corresponding to use of those shipping companies. However, the Bilibin system does not describe or suggest multiple alternative fulfillment plans as claimed, and further provides no support for the use of multiple alternative item distribution centers in the manner claimed. In particular, in Bilibin, the single starting location of the item being auctioned appears to be fixed by the auction seller before the shipping prices are obtained (e.g., the item is to be picked up from the seller's home, or the seller will drop off the item at a designated Mail Boxes Etc. store or other designated third-party location) – since the item location is fixed, and furthermore since the auction seller typically has only a single copy of the item that he/she is selling, it would not

make sense for the seller to attempt to have or use multiple alternative geographically distributed item distribution centers that each have copies of the item for use in fulfilling orders from customers. Furthermore, since Bilibin lacks the idea of any distribution centers, it has no reason to consider evaluating a fulfillment plan option based on considering processing that would occur at one or more distribution centers.

Thus, Carmax and Bilibin are generally unrelated to a merchant that performs automated processing to determine how to fulfill orders for items by packaging and shipping the items from one of multiple alternative item distribution centers, and both fail to disclose a number of the recited claim elements. Furthermore, because Carmax and Bilibin are unrelated to a merchant's automated processing of orders, there is no motivation to modify the systems of those references to include the missing functionality, as discussed below.

As a first example of why the pending claims are patentable over Carmax and Bilibin, those cited prior art references appear to lack any notion of a computer system of a merchant that automatically selects a particular fulfillment plan option based on factors such as an automatically determined actual delivery time and an automatically determined cost that corresponds to use of the selected fulfillment plan. As previously noted, independent computer-implemented method claim 16 as rejected and as amended generally recites such functionality, as shown below for claim 16 as amended:

under control of a computer system of the merchant, . . . automatically selecting one of the at least some determined fulfillment plans to be used for fulfilling the order based at least in part on the [automatically] determined actual delivery time for the selected fulfillment plan and based at least in part on the [automatically] determined cost for the selected fulfillment plan; . . .

Various other claims as previously rejected, including claims 9-10, 54-58 and 68, include similar recitations. In addition, other claims further recite additional use of the automatically selected fulfillment plan, such as claims 18-19 and 42 that generally recite enabling a user to complete the order using the selected fulfillment plan.

Conversely, in both Carmax and Bilibin, there is no notion of a computer system of a merchant that automatically evaluates and selects a fulfillment plan option in the claimed manner. Even assuming, *arguendo*, that selling different used cars or sending an auction item using different shipping options is analogous to having multiple fulfillment plan options for

fulfilling an order for items from a merchant using one of multiple alternative distribution centers of the merchant, Carmax and Bilibin both disclose that a user manually selects a particular 'fulfillment plan option' to make or complete a purchase.

The current Office Action admits this failing with respect to Carmax, indicating that "Carmax . . . fails to disclose selecting one of the fulfillment plans, at least based on cost and provide [sic] the information to the customer about the selected one." (Office Action dated June 13, 2008, page 12). However, the current Office Action alleges that the system of Bilibin uses a 'best price' or 'best date' to automatically select a particular shipping plan, pointing to Figure 36F and the corresponding textual description. Despite this allegation, however, the cited functionality of Bilibin does not perform any automated selection by a computer system of a merchant of a particular shipping option. Instead, Figures 36A and 36F disclose user interface screens that are displayed to a user who is examining shipping options, and the user interface screen of Figure 36F allows the user to manually indicate to sort the displayed information in a table using user-specified criteria such as price or delivery date. In particular, Bilibin indicates the following with respect to actions of the Shipper user (the user who is interactively specifying shipping information):

[0258] FIG. 36a depicts an exemplary Dynamically Dimensional Multi-Carrier, Multi-Service Graphic Array online display as part of an exemplary supplemental Shipper Parcel Specification Input Screen. . . .

As depicted in FIG. 36a, the Shipper is asked to input the Expected Ship Date 1060. In the exemplary embodiment depicted, a drop down menu activation mechanism 1061 provides the Shipper the ability to activate a pull down menu (not shown) of seven entries beginning with the current date and includes the six days immediately following the current date. . . . In the exemplary embodiment depicted in FIG. 36a, once the Shipper selects the Expected Ship Date, the System . . . prepare[s] the Graphic Array containing the delivery prices and delivery times for the Subject Parcel according to the Shipper's Parcel Specifications. . . . if the Shipper click[s] on a particular Carrier cell entry such as 1065, the System will allow the Shipper to then click on the "Next" button 102 and proceed to the Service Option Screen as depicted in FIG. 28. . . .

[0289] FIG. 36f is a graphic representation of an alternative exemplary Dynamically Dimensioned Multi-Carrier, Multi-Service Graphic Array online display as a Preview Rates Screen (also referred to in some embodiments as a Rates and Times Screen) in an alternative exemplary embodiment of the invention. The Graphic Array format of the Preview Rates Screen depicted in FIG. 36f is sortable by price (i.e., cheapest first), by delivery time (i.e., fastest is first), or preferred carrier, as governed by the enterprise and User preferences. . . .

The exemplary Preview Rates Screen depicted in FIG. 36f depicts an array of dates for delivery 5303-5305, multiple Carriers, e.g., 5128 (UPS), 5310 (FedEx), and 5311 (Airborne Express). . . . In one embodiment of the invention, the User can limit the default display of Carrier and Service comparison to certain Carriers and certain Services. . . . The presence or absence of Carriers in the Graphic Array display is driven by User-specified preferences, if any, and by service choices the user has made (for example, by choosing a billing option that only certain Carriers support). . . . The rates calculated and displayed in the Graphic Array are customizable. Some Users may wish to see the iShip System transaction charge included in the rate quote. In one embodiment of the invention, a Rating button is provided on the same screen on which the Graphic Array is displayed, with which the User can toggle the rates displayed in the Graphic Array back and forth between the actual shipping rates (including all discounts and fees) and the rate that the Carrier charges for shipping.

Bilibin, paragraphs 258-295, emphasis added.

Thus, no automated selection of a particular option is performed by a computing system in Bilibin – instead, the system sorts a group of data in a user-specified manner, and the user later manually selects a particular option.

Accordingly, the combination of the Carmax and Bilibin systems disclose nothing more than displaying information to a user about multiple alternatives, and allowing the user to interactively sort the displayed information according to different criteria that is indicated by the user. In addition, the current Office Action provides no motivation to modify this combination to include the recited automated functionality, nor does it provide any explanation as to how or why such functionality would be implemented. Furthermore, since both Carmax and Bilibin emphasize the actions of users in interactively examining information about multiple alternatives, these references teach away from a modification in which an automated selection of a particular alternative is made, as such an automated selection may limit the choices of a user.

Thus, each of the pending claims 9-10, 16-19, 32-58 and 68 is patentable over Carmax and Bilibin for at least this reason.

As a second example of why the pending claims are patentable over Carmax and Bilibin, those cited prior art references appear to lack any notion of a computer system of a merchant that automatically evaluates alternative options for fulfilling an order for items based on factors such as determined information about processing that would take place at a merchant distribution center that fulfills the order, such as processing to prepare the order to be packaged and shipped.

As previously noted, each of the independent claims as rejected and as amended generally recites such functionality, as shown below for claims 16 and 63 as amended:

[claim 63] under the control of the computer system of the merchant, and for each of multiple of the determined options, determining an actual provision date on which the order will be provided to the recipient if that determined option is used for fulfilling the order and determining a cost for fulfilling the order if that determined option is used to fulfill the order, the determining of the actual provision date being based at least in part on processing that would take place at the distribution center for the option to prepare the order to be packaged and shipped; . . .

[claim 16] under control of a computer system of the merchant, . . . for each of at least some of the determined fulfillment plans, automatically determining a time of actual delivery of the items if that fulfillment plan is used to fulfill the order and determining a cost for fulfilling the order if that fulfillment plan is used to fulfill the order, the determining of actual delivery time based at least in part on information determined about processing that would take place at the distribution centers indicated by the fulfillment plan and on information about transporting of the items from those indicated distribution centers to the recipient, the processing that would take place at those indicated distribution centers for that fulfillment plan including preparing the items for the transporting of the items from those indicated distribution centers; . . .

The other independent claims 1, 54, 59, 62, and 77 each recite similar language.

Conversely, in both Carmax and Bilibin, there is no notion of a computer system of a merchant that automatically evaluates alternative fulfillment plan options using information about processing that would take place at one or more item distribution centers of the merchant, and more generally Carmax and Bilibin do not appear to include any notion of using such information in any manner. As previously noted, Bilibin completely lacks any idea of having such item distribution centers of merchants, and the different car stores of Carmax are likely just parking lots on which vehicles are parked, with no indication of any processing that is performed on a vehicle when it is provided to a user.

Moreover, the current Office Action appears to lack any indication of where such claimed functionality is present in the cited prior art references, or why it would be obvious to modify the systems of the prior art references to use such information – accordingly, the current Office Action fails to provide even a *prima facie* case of obviousness with respect to these claim elements. Instead, the current Office Action generally points to two paragraphs of Carmax about transferring cars between stores, and a table that lists a dollar amount and a number of days for

each combination of various geographical locations. These cited aspects of Carmax are shown below, and include no indication of, for example, "processing that would take place at the distribution center for the option to prepare the order to be packaged and shipped" (claim 63).

**Do you transfer used cars between stores?**

Yes, we do! We transfer used cars between stores in the same market for FREE! And if you find a car outside of your region, we'll transfer it to the store near you (within a 600-mile radius) for a small fee.

[Click here](#) for details on our used car transfer policy.

**Do you transfer new cars between stores?**

No, we don't. According to new car franchise laws, new cars can only be sold from a location authorized by the manufacturer. But because of our incredibly low prices, many customers often visit the CarMax of their choice and drive home their new car the same day.

[Click here](#) for the CarMax store near you.

Carmax, "About Transferring Cars," page 3.

**Used Car Transfer Fees\* & Delivery Times**

\* \$150 of any fee can be applied toward purchase of the transferred vehicle.

From / To	Atlanta	Balt. & DO	Charlotte	Chicago / Kenosha	Dallas / Ft. Worth	South Fla.	Central Fla.	Gainesville	Houston	Los Angeles	Nashville	Raleigh	Richmond	San Antonio
Atlanta	Free 4 Days	\$400 21 Days	\$150 7 Days	\$450 21 Days	\$450 21 Days	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$450 21 Days	\$750 28 Days	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$475 21 Days
Baltimore & DC	\$400 21 Days	Free 4 Days	\$150 7 Days	\$450 21 Days	\$600 21 Days	\$500 21 Days	\$450 21 Days	\$150 7 Days	\$650 21 Days	\$800 28 Days	\$450 21 Days	\$150 7 Days	\$150 7 Days	\$550 21 Days
Charlotte	\$150 7 Days	\$150 7 Days		\$450 21 Days	\$650 21 Days	\$350 14 Days	\$150 7 Days	\$150 7 Days	\$650 21 Days	\$600 28 Days	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$600 21 Days
Chicago & Kenosha	\$450 21 Days	\$460 21 Days	\$460 21 Days	Free 4 Days	\$450 21 Days	\$550 21 Days	\$500 21 Days	\$450 21 Days	\$650 21 Days	\$600 28 Days	\$150 7 Days	\$450 21 Days	\$450 21 Days	\$800 21 Days
Dallas & Fort Worth	\$450 21 Days	\$600 21 Days	\$650 21 Days	\$450 21 Days	Free 4 Days	\$600 21 Days	\$450 21 Days	\$150 7 Days	\$650 21 Days	\$600 28 Days	\$360 21 Days	\$650 21 Days	\$650 21 Days	\$160 21 Days
Southern Florida	\$150 7 Days	\$600 21 Days	\$350 14 Days	\$550 21 Days	\$500 21 Days	Free 4 Days	\$150 7 Days	\$400 21 Days	\$600 21 Days	\$600 28 Days	\$450 21 Days	\$360 21 Days	\$450 21 Days	\$600 21 Days
Central Florida	\$150 7 Days	\$450 21 Days	\$150 7 Days	\$600 21 Days	\$450 21 Days	\$160 7 Days	Free 4 Days	\$150 7 Days	\$450 21 Days	\$800 28 Days	\$360 21 Days	\$150 7 Days	\$350 14 Days	\$450 21 Days
Greenville, SC	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$450 21 Days	\$450 21 Days	\$400 21 Days	\$150 7 Days	\$450 21 Days	\$600 28 Days	\$600 28 Days	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$600 21 Days
Houston	\$450 21 Days	\$660 21 Days	\$660 21 Days	\$660 21 Days	\$150 7 Days	\$500 21 Days	\$450 21 Days	Free 4 Days	\$450 21 Days	\$400 21 Days	\$650 28 Days	\$400 21 Days	\$600 21 Days	\$150 7 Days
Los Angeles	\$750 28 Days	\$800 28 Days	\$800 28 Days	\$600 28 Days	\$800 28 Days	\$800 28 Days	\$800 28 Days	\$800 28 Days	\$600 28 Days	\$600 28 Days	Free 4 Days	\$650 28 Days	\$800 28 Days	\$850 28 Days
Nashville	\$150 7 Days	\$460 21 Days	\$150 7 Days	\$450 21 Days	\$150 7 Days	\$350 21 Days	\$350 21 Days	\$150 7 Days	\$400 21 Days	\$400 28 Days	\$550 28 Days	\$150 7 Days	\$160 7 Days	\$600 21 Days
Raleigh	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$450 21 Days	\$550 21 Days	\$350 14 Days	\$150 7 Days	\$150 7 Days	\$650 21 Days	\$800 28 Days	\$160 7 Days	\$160 7 Days	\$160 7 Days	\$800 21 Days
Richmond	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$450 21 Days	\$850 21 Days	\$450 21 Days	\$350 14 Days	\$150 7 Days	\$150 21 Days	\$600 21 Days	\$800 28 Days	\$150 7 Days	\$150 7 Days	\$600 21 Days
San Antonio	\$475 21 Days	\$650 21 Days	\$600 21 Days	\$600 21 Days	\$150 7 Days	\$600 21 Days	\$450 21 Days	\$450 21 Days	\$600 21 Days	\$600 21 Days	\$550 21 Days	\$600 21 Days	\$600 21 Days	\$600 21 Days

Carmax, page 8.

Thus, Carmax and Bilibin do not disclose or motivate using information about processing that takes place at a merchant's item distribution centers to automatically determine information about an option for fulfillment of an order.

Accordingly, each of the pending claims is patentable over Carmax and Bilibin for at least this reason as well.

In addition, some of the pending claims include further recitations about particular types of processing that takes place at a merchant's item distribution centers to automatically determine information about an option for fulfillment of an order, and about how that information is used in the recited automated determinations performed by the merchant's computer systems. As one example, claim 43 as previously rejected and claim 15 as amended recite the following, with emphasis added, and claim 81 includes similar recitations.

[claim 43] wherein the determined information about the processing that would take place at the distribution centers indicated by the selected fulfillment plan includes an indication of one or more processing lanes to be used at each of the distribution centers indicated for the selected fulfillment plan, such that the determining of the actual delivery time for the selected fulfillment plan is further based in part on the indicated one or more processing lanes.

[claim 15] wherein at least some of the determined fulfillment plans additionally indicate one or more processing lanes to be used at each of the indicated item distribution centers, and wherein, for each of the at least some determined fulfillment plans, the determining of the actual delivery date for that fulfillment plan is based at least in part on the one or more processing lanes indicated to be used for that fulfillment plan.

The current Office Action fails to provide any indication of why the recited claim elements are obvious in light of the prior art, and in fact admits that Carmax and Bilibin fail to disclose such functionality, stating “Carmax and Bilibin . . . fail to disclose the fulfillment plans including processing lanes.” (Office Action dated June 13, 2008, page 9, with respect to claim 15, and similar indication on pages 12-13 with respect to claim 43). However, the current Office Action alleges that the recited claim elements are nonfunctional descriptive material and not functionally involved in the recited steps, stating “[t]he steps of providing the delivery fulfillment plans and indicating the fulfillment plans, would be performed the same regardless of whether the plans included the processing lanes due to the fact that no further steps use the information on the

processing lanes for any other reason.” (Office Action dated June 13, 2008, pages 13 and 9). However, this allegation of the recitations being nonfunctional descriptive material is clearly incorrect, as claim 43 as previously rejected recites that “the determining of the actual delivery time for the selected fulfillment plan is further based in part on the indicated one or more processing lanes” and recites “selecting one of the at least some determined fulfillment plans to be used for fulfilling the order based at least in part on the determined actual delivery time for the selected fulfillment plan.” Claim 15 as amended recites similar language. Accordingly, the information about the processing lanes is used in automatically determining actual delivery time, and the automatic selecting and use in claim 43 of a particular fulfillment plan is based on that automatically determined actual delivery time.

Thus, since it is clear that the claim recitations are not nonfunctional descriptive material, and since the current Office Action admits that the relied-upon prior art does not disclose such functionality, Applicants submits that these claims are further allowable for at least this reason.

Furthermore, as previously noted, no reason is apparent why one of skill in the art would be motivated to modify the Carmax and/or Bilibin systems to include the claimed features and techniques that they lack. Applicants note that the Supreme Court recently emphasized in its *KSR v. Teleflex* ruling (U.S. Supreme Court, 2007) that a finding of obviousness should be supported by an explicit reason that one of skill in the art would have been motivated to modify existing systems or techniques to achieve the claimed systems or techniques. In this situation, one example of why one skilled in the art would not have a reason to modify the Carmax and Bilibin systems to achieve the benefits of Applicants’ inventive techniques recited in the pending claims is that the Carmax and Bilibin systems are not related to a merchant’s automated fulfillment of orders for items from multiple alternative item distribution centers, and thus there is no reason to modify the Carmax and Bilibin systems to include such functionality. Accordingly, no reason has been demonstrated why one of skill in the art would be motivated to modify the Carmax and Bilibin systems to include the various claimed elements that those systems lack, and all of the pending claims are further patentable for this reason as well.

Thus, for at least all of these reasons, the pending independent claims are patentable over Carmax and Bilibin. In addition, the pending dependent claims include the features of those claims from which they depend, and are thus allowable for the same reasons as those claims.

Moreover, the pending dependent claims also recite additional features lacking in the cited references, and are thus allowable on the basis of those features as well.

For example, some of the pending claims generally recite that the determining of the cost of use for a particular fulfillment plan option for a current order includes modeling future costs of supplying future orders, and further includes costs assigned to reduction in customer goodwill based on using that particular fulfillment plan, such as claims 14 and 40 as previously rejected and as currently amended. The current Office Action does not provide any indication of corresponding disclosure in the cited prior art, other than a reference to a single paragraph in Bilibin that makes no mention of customer goodwill, nor of costs of expected future orders that are based on the current use of a particular fulfillment plan. The current Office Action instead argues that the ‘expected future orders’ recited in “future costs of supplying expected future orders . . . if the indicated items are supplied to the customer using the fulfillment plan” (claim 14) can be interpreted to be a current cost for a current order if the current order is not yet completed. While Applicants believe that this interpretation is incorrect based on the plain language of the claims as rejected, claims 14 and 40 have been amended to make abundantly clear that the expected future orders are distinct from the current order. Accordingly, for both of these reasons related to modeling future costs of expected future orders and to assigning costs to reductions in customer goodwill, claims 14 and 40 are further patentable over the cited prior art references. Various other dependent claims recite other additional features lacking in the cited references, and are thus allowable on the basis of those features as well, although these additional features are not enumerated here for the sake of brevity.

### Conclusion

In light of the above remarks, Applicants respectfully submit that all of the pending claims are allowable. Applicants therefore respectfully request the Examiner to reconsider this application and timely allow all pending claims. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 694-4815.

Application No. 09/965,121  
Reply to Office Action dated June 13, 2008

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,  
SEED Intellectual Property Law Group PLLC

/James A. D. White/

James A. D. White  
Registration No. 43,985

JDW:jrh

701 Fifth Avenue, Suite 5400  
Seattle, Washington 98104-7092  
Phone: (206) 622-4900  
Fax: (206) 682-6031